

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RONALD SIMPSON,

Petitioner,

v.

CASE NO. 06-CV-11967
HONORABLE DENISE PAGE HOOD

MILLICENT WARREN,

Respondent.

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ORDER DENYING MOTIONS FOR RELEASE FROM CUSTODY PENDING APPEAL

This matter is before the Court on Petitioner's motions for release from custody pending appeal concerning the Court's September 29, 2009 decision conditionally granting his petition for a writ of habeas corpus on a prosecutorial misconduct claim. The case is currently pending on appeal before the United States Court of Appeals for the Sixth Circuit. This Court has stayed its decision pending the resolution of that appeal. Petitioner has since filed two motions for release from custody.

Federal Rule of Appellate Procedure 23(c) provides that, while a decision ordering the release of a prisoner is on appeal, "the prisoner must – unless the court or judge ordering the decision, or the court of appeals, or the Supreme Court, or a judge or justice of either court orders otherwise – be released on personal recognizance, with or without surety." The United States Supreme Court has held that this rule "undoubtedly creates a presumption of release from custody in such cases." *Hilton v. Braunskill*, 481 U.S. 770, 774 (1987). That presumption, however, may be overcome in the district judge's discretion. *Id.*

In making such a determination, a federal court may consider “[t]he State’s interest in continuing custody and rehabilitation pending a final determination of the case on appeal . . . it will be strongest where the remaining portion of the sentence to be served is long, and weakest where there is little of the sentence remaining to be served.” *Id.* at 777. In this case, Petitioner was sentenced to 30 to 50 years imprisonment and a consecutive term of two years imprisonment. His earliest release date is in December, 2014 and his maximum discharge date is in August, 2033. The remaining portion of his sentence is long.

Additionally, a federal court may consider “the dangerousness of a habeas petitioner as part of its decision” whether to release him pending appeal. *Id.* at 778. Petitioner was convicted of assault with intent to murder and felony firearm in this case and the incident involved shooting at a police officer. Petitioner also pleaded guilty to assaulting an employee or jail escape while incarcerated and was sentenced to one to four years imprisonment. Petitioner presents a potential danger to the community.

The Pretrial Services Report indicates several violations while in custody from 1986 until 2007. The Pretrial Services believes that there is no condition or combination of conditions that will reasonably assure the safety of the community and recommends that detention continue pending appeal. The Court acknowledges that Petitioner has engaged in worthwhile activities while incarcerated. Nonetheless, given the length of his sentence, the assaultive nature of the charges, and his prison record, the Court finds that he should not be released from custody pending the resolution of the appeal in this case.

Accordingly, the Court **DENIES** Petitioner’s motions for release from custody [Dkt. #66, #77].

IT IS SO ORDERED.

s/Denise Page Hood

Denise Page Hood

United States District Judge

Dated: April 21, 2011

I hereby certify that a copy of the foregoing document was served upon Ronald S. Simpson #184486, Mound Correctional Facility, 17601 Mound Road, Detroit, MI 48212 and counsel of record on April 21, 2011, by electronic and/or ordinary mail.

s/LaShawn R. Saulsberry

Case Manager